THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.25328 of 1997

Dated 27-02-2007

Between:
Khaza Miyan.

..... PETITIONER

AND

A.P.State Road Transport Corporation rep. By its Managing Director, Mushirabad, Hyderabad & others.

.....RESPONDENTS

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

WRIT PETITION No.25328 of 1997

O R D E R:

The petitioner was charged of unauthorized absence from duty from 30-04-1992 till 26-05-1992 and was imposed the punishment of removal from service. On appeal, the appellate authority took a lenient view and appointed him as a driver afresh.

Sri A.K.Jaya Prakash Rao, learned counsel for the petitioner, would take this Court through the affidavit filed in support of the writ petition, in support of his submission, that the petitioner, had, in fact, undergone treatment with the doctor of the respondent-Corporation and had submitted his leave application well within time. Learned counsel would submit that, since the petitioner had undergone treatment and had submitted the required leave application, his absence cannot be said to be unauthorized nor can he be imposed any punishment, much less the punishment of removal from service. Learned counsel would submit that the punishment imposed, both by the disciplinary authority and the appellate authority, is shockingly disproportionate and would rely on the judgments of the Karnataka High Court in **Ramu v. District & Sessions Judge, kolar**[1] and the Bombay High Court in **Kashinath Laxman Gawali Datta Prasad v. The General Manager Hindustan Aeronautics Ltd. & Ors.**[2]. Learned counsel would further contend that since appointment as a driver afresh is not among the punishments enumerated in regulation 8 of the Andhra Pradesh State Road Transport Corporation Employees (Classification, Control and Appeal) Regulations, 1967 (for short 'APSRTC Regulations'), the appellate authority was not entitled to impose such punishment and, at best, could have imposed a minor penalty as prescribed in regulation 8 of the APSRTC Regulations. Learned counsel would place reliance on **State Bank of India v. T.J.Paul**[3]. Learned counsel would further contend that since the petitioner had been working with the respondent-Corporation ever since

1977, when he was appointed as a driver, it would be wholly inequitable to now permit the appellate authority to impose the punishment of appointment as a driver afresh and it would meet the ends of justice if the order of punishment is quashed since the petitioner had not committed any misconduct, or a minor penalty is imposed if this Court came to the conclusion that the charge was held established.

It is well settled that it is not for this Court, in proceedings under Article 226 of the Constitution of India, to sit in appeal over the nature and extent of punishment to be imposed. For proved misconduct of an employee, imposition of punishment is in the employer's realm and it is only if the punishment is one which could not have been imposed at all or is one which shocks its conscience, would this Court be justified in interfering with the quantum of punishment.

In **Ramu**[1], the employee was dismissed from service for unauthorized absence from duty. The Karnataka High Court, taking note of the fact that he had five children and no other ostensible source of livelihood, modified the punishment to one of denial of back wages and withholding of two increments with cumulative effect and set aside the order of dismissal.

In **Kashinath Laxman Gawali Datta Prasad**[2], the Bombay High Court held that the reasons for which the delinquent had remained absent was because his wife was due to deliver in the month of May, and thereafter, family planning operation had to be performed on her, that there was none else to look after the family and that he had chosen to take care of the health and welfare of his wife. The Bombay High Court interfered with the punishment of dismissal holding that it was shockingly disproportionate.

It is well settled that it is not for the High Court, under Article 226 of the Constitution of India, to interfere with the quantum of punishment imposed as a matter of course or on sympathetic considerations.

The Writ Petition is, nonetheless, required to be allowed on the short ground that the appellate authority substituted the punishment of

removal from service to one of his appointment as a driver afresh, which is a punishment not prescribed under the APSRTC Regulations. Regulation 27 of the APSRTC Regulations prescribes the duties of the appellate authorities and under clause (1)(c)(i) thereof, in case of an appeal against an order imposing any of the penalty specified in regulation 8, the appellate authority shall consider whether the penalty imposed is excessive, adequate or inadequate and after such consideration, shall pass orders, setting aside, reducing, confirming or enhancing the penalty.

In the present case, the appellate authority had exercised the appellate powers to reduce the penalty from that of removal from service. The question, however, is whether he was empowered to reduce the punishment to one of appointment as a driver afresh. Regulation 8 of the APSRTC Regulations deals with penalties and reads thus:

> (1) The following penalties may, for good and sufficient reason and as hereinafter provided, be imposed upon an employee namely:-
>
> (i) censure;
>
> (ii) withholding of the privilege of free passes or privilege ticket orders or both for travel on the railway or the bus services of the Corporation, as the case may be, in the case of employees to whom such privilege or privileges are admissible;
>
> (iii) fine, in the case of persons for whom such penalty is permissible under these Regulations, vide sub-clause (3);
>
> (iv) withholding of increments;
>
> (v) recovery from pay of the whole or part of any pecuniary loss caused to the Corporation by an employee's negligence or breach of orders;
>
> (vi) suspension, where a person has already been suspended under regulation 18 pending enquiry into his conduct, to the extent considered necessary by the authority imposing the penalty;
>
> (vii) reduction to a lower rank in the seniority list or to a lower post or time scale, whether in the same class of service or in another class, or to a lower stage in a time-scale;
>
> (viii) removal from the service of the Corporation which does not disqualify from future employment;
>
> (ix) dismissal from the service of the Corporation which ordinarily disqualifies from future employment;

The punishment of appointment as a driver afresh is not one among the penalties specified in the regulations. In **T.J.Paul**[3], the Supreme Court observed:-

"……..Learned Senior Counsel for the appellants, Shri T.R.Andhyarujina tried to submit that if the appellate authority decided not to dismiss the respondent, it still had inherent power to award a punishment of "removal", which was lesser in severity. Learned Senior Counsel contended that the discretion of the authorities to award such an appropriate punishment could not be interfered with in view of the decision of this Court in **Union of India v. G.Ganayutham** (1997(7) SCC 463). In our view, this decision is not applicable to the facts of the case. Here the Court is not interfering with the punishment awarded by the employer on the ground that in the opinion of the Court the punishment awarded is disproportionate to the gravity of the misconduct. Here, the gradation of the punishments has been fixed by the rules themselves namely, the rules of Bank of Cochin and the Court is merely insisting that the authority is confined to the limits of its discretion as restricted by the rules. Inasmuch as the rules of Bank of Cochin have enumerated and listed out the punishments for "major misconduct", we are of the view that the punishment of "removal" could not have been imposed by the appellate authority and all that was permissible for the Bank was to confine itself to one or the other punishment for major misconduct enumerated in para 22(v) of the rules, other than dismissal without notice. This conclusion of ours also requires the setting aside of the punishment of "removal" that was awarded by the appellate authority. Now the other punishments enumerated under para 22(v) are "warning or censure or adverse remark being entered, or fine, or stoppage of increments/reduction of basic pay or to condone the misconduct and merely discharge from service". The setting aside of the removal by the High Court and the relief of consequential benefits is thus sustained. The matter has, therefore, to go back to the appellate authority for considering imposition of one or the other punishment in para 22(v) other than dismissal without notice……."

The Supreme Court remanded the matter to the appellate authority for considering imposition of one or the other punishment, other than dismissal from service, on the respondent. Following the judgment of the Supreme Court in **T.J.Paul**[3], there shall be a direction to the respondent-Corporation to consider imposition of an appropriate punishment, as prescribed in regulation 8 of the APSRTC Regulations, other than that of dismissal from service.

Since the writ petition is required to be allowed on this short ground, it is wholly unnecessary to examine whether the petitioner had, in fact, undergone treatment with the doctor of the respondent-Corporation or whether he was sanctioned leave in this regard. Neither Sri A.K.Jaya Prakash Rao, learned counsel for the petitioner nor Sri V.T.M.Prasad,

learned standing counsel for the respondent-Corporation, has placed before this Court a copy of the enquiry proceedings and, as such, this Court is not in a position to ascertain whether such a plea was indeed taken before the enquiry officer. Ends of justice would be met if the petitioner is permitted to submit a representation on these factual aspects and a direction is given to the appellate authority to consider the same and pass appropriate orders, thereupon, in accordance with law. Sri A.K.Jaya Prakash Rao, learned counsel for the petitioner, would submit that such a representation would be made within four weeks from the date of receipt of a copy of this order. The appellate authority shall, within a period of three months from the date of receipt of such representation, consider the same and pass appropriate orders in accordance with law. Needless to state that till final orders are passed by the appellate authority, since the petitioner has been continuing in service for the past more than a decade, *status quo* as on today shall be maintained in the meanwhile.

The Writ Petition is disposed of accordingly. No order as to costs.

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27-02-2007

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[1] 1989 LAB.I.C. 1818

[2] 1991 (2) CLR 228

[3] 1999(4) SCC 759